

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

SHERON PHIPPS,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

Case No. 2:11-cr-00080
Judge Peter C. Economus
Magistrate Judge Terrence P. Kemp
MEMORANDUM OPINION AND ORDER

This matter is before the Court for consideration of the Report and Recommendation of the Magistrate Judge. (ECF No. 64.) The Magistrate Judge recommended that this action be transferred to the United States Court of Appeals for the Sixth Circuit.

On October 6, 2014, Petitioner Sheron Phipps filed the instant motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. He challenges his February 6, 2012, judgment of conviction on a charge of possession with intent to distribute cocaine, made pursuant to the terms of his negotiated guilty plea. (ECF No. 16 at 41.) He asserts that he was denied effective assistance of counsel. (*Motion to Vacate*, ECF No. 63.) On March 3, 2014, however, Petitioner filed a prior § 2255 motion challenging this same conviction. (*Motion to Vacate*, ECF No. 53.) On April 2, 2014, this Court denied Petitioner's prior motion to vacate, set aside or correct sentence. (*Order*, ECF No. 57.) This action therefore constitutes a successive petition (i.e. a second petition directed to the same conviction as a prior petition). The Magistrate Judge found that unless the court of appeals has given approval for the filing of a second or successive petition, a district court in the Sixth Circuit must transfer the petition to the Sixth Circuit Court of Appeals. *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997) (*per curia*).

The Report and Recommendation of the Magistrate Judge specifically advised the parties that failure to object to the Report and Recommendation within fourteen days results in a

“waiver of the right to *de novo* review by the District Judge and waiver of the right to appeal the judgment of the District Court.” (*Report & Recommendation*, ECF No. 64 at 3.) The time period for filing objections to the Report and Recommendation has expired. No party has objected to the Report and Recommendation.

The Court reviewed the Report and Recommendation of the Magistrate Judge pursuant to 28 U.S.C. § 636(b). Noting that no objections have been filed and that the time for filing such objections has expired, the Court **ADOPTS** the Report and Recommendation of the Magistrate Judge. This action shall be **TRANSFERRED** to the United States Court of Appeals for the Sixth Circuit for authorization for filing as successive.

The Clerk is **DIRECTED** to remove this action from the Court’s pending case list.

IT IS SO ORDERED.



UNITED STATES DISTRICT JUDGE